

STEWART, GREENBLATT, MANNING & BAEZ

ATTORNEYS AT LAW
6800 JERICHO TURNPIKE

SUITE 100W
SYOSSET, NY 11791

516-433-6677
FAX 516-433-4342

KAFI WILFORD (2003-2010)
MICHAEL H. RUINA (1992-2016)

RAYMOND J. SULLIVAN
MONICA M. O'BRIEN
MARY ELLEN O'CONNOR
JAMES MURPHY
OF COUNSEL

DONALD R. STEWART (RET.)
MADGE E. GREENBLATT (RET.)
ROBERT W. MANNING
RICARDO A. BAEZ
DAVID J. GOLDSMITH
PETER MICHAEL DeCURTIS
LAURETTA L. CONNORS
JOHN K. HAMBERGER
LISA LEVINE
ANDREA L. De SALVIO
KRISTY L. BEHR
LUKE R. TARANTINO
THOMAS A. LUMPKIN
JONATHAN SO

Supreme Court, Appellate Division, Third Department, New York

In the Matter of the Claim of

SANDRA GIMBER, Claimant,

v.

EASTMAN KODAK COMPANY, Appellants,

WORKERS' COMPENSATION BOARD, Respondent.

March 16, 2020

Facts: A widow filed a claim for death benefits alleging her husband died of mesothelioma as a result of exposure to asbestos at work. The claim was established against the decedent's last employer who tried to raise Section 44 apportionment against the decedent's prior employer where he was also exposed to asbestos. The Law Judge denied the apportionment request and on appeal the Board affirmed the denial.

Holding: Affirmed.

Discussion: The decedent was employed with his last employer from 1967 to 1985. He worked for the prior employer until 1967. He was not treated with or diagnosed with mesothelioma until 2013 and died that same year. The last employer alleged that the cumulative exposure at both jobs caused the disease, however, there was no objective medical evidence to establish when the disease was contracted nor was there any evidence to suggest the decedent had symptoms while employed with the first employer. Any medical opinion suggesting that the decedent's prior employment contributed to the condition would be speculative and the Board has relied on substantial evidence to find such an opinion incredible and thereby hold that there is no apportionment.